

CHAPTER 9
CONTESTED CASES

429—9.1(17A) Introduction.

9.1(1) *The contested case.* These rules are intended to provide an evidentiary hearing for those persons whose individual legal rights, duties or responsibilities will be adversely affected by an agency action. These rules implement the statutory provisions of Iowa Code sections 17A.10 to 17A.17.

9.1(2) *Informal settlement.* Individuals are encouraged to meet informally with agency representatives to resolve issues that might culminate in a contested case.

9.1(3) *Participants in the contested case process.*

a. “Party” means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

b. “Presiding officer” means the individual assigned to hear and decide the contested case. The individual may be either a hearing officer, the agency administrator, or one or more members of the commission. No individual may serve as presiding officer or decide an intraagency appeal who is biased against any party to the contested case or who has a personal interest in the outcome in the contested case, or who has prosecuted or advocated concerning that case or a similar case involving the same parties. For additional provisions relating to bias, refer to Iowa Code section 17A.17.

9.1(4) *Waiver.* Any of the rights established in these procedures established in Iowa Code chapter 17A and these rules may be waived by the individual.

9.1(5) *Place and manner of filing.* All requests or filings related to a contested case must be delivered to the Division of Deaf Services, Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319, either in person or by certified mail, return receipt requested. All requests or filings are deemed received only when delivered to the agency at the above address.

9.1(6) *Form and caption.* All pleadings, motions, or other requests filed with the agency as part of the contested case must be legibly printed or typed on standard, letter-size paper; only one side of the sheet may be used. All pleadings, motions, or other requests shall be signed by the party and contain the following caption:

DIVISION OF DEAF SERVICES
DEPARTMENT OF HUMAN RIGHTS
LUCAS STATE OFFICE BUILDING
DES MOINES, IOWA 50319

IN THE MATTER OF:

State name and
address of party

(State type of pleading
or motion; e.g., ANSWER,
REQUEST FOR SUBPOENA)

Docket # _____

429—9.2(17A) Commencing the contested case.

9.2(1) *Introduction.* The commencement of a contested case is regulated by provisions of Iowa Code section 17A.12.

a. *Individual requests for a contested case.* The agency is responsible for the commencement of the contested case process, but individuals who believe that they are aggrieved or adversely affected

may request a contested case to contest that action. All requests for a contested case must be in writing and delivered to the agency as provided in subrule 9.1(6). Requests must identify the requesting individuals and their addresses and must clearly identify the nature of their interests and the agency action that may aggrieve the individuals or adversely affect their interests.

b. Reserved.

9.2(2) *Acknowledgment of notice.* Within ten days of the receipt of the notice, the parties must in writing acknowledge the receipt of the notice and state whether the party will be present at the hearing and whether the scheduled time and date are acceptable.

9.2(3) *Answer.* Within twenty days of receipt of the notice, the parties shall file with the agency an answer which contains:

- a. The name, address, and telephone number of the party.
- b. Clear and concise statements regarding any or all allegations in the notice. These statements shall be either admissions, denials, explanations, remarks or statements of mitigating circumstances.
- c. Any additional facts or information the party deems relevant to the contested case.

429—9.3(17A) The contested case hearing. The hearing is regulated generally by Iowa Code subsections 17A.12(3) to 17A.12(8).

9.3(1) *Rule of the presiding officer.* The presiding officer shall:

- a. Open the record and receive appearances.
- b. Administer oaths and issue subpoenas.
- c. Enter the notice of hearing into the record.
- d. Receive testimony and exhibits presented by the parties.
- e. Interrogate witnesses.
- f. Rule on objections and motions.
- g. Close the hearing.
- h. Issue a decision containing findings of facts and conclusions of law.

9.3(2) *Failure to appear.* If a party fails to appear at the hearing, the presiding officer shall recess the hearing for one hour. If the missing party has not appeared during that time or otherwise contacted the presiding officer, the officer may proceed with the hearing and render a decision in the absence of the party.

9.3(3) *Decorum.* Any person or party who displays unruly or contemptuous behavior may be expelled from the meeting.

9.3(4) *Proceedings recorded and open to the public.* The hearing shall be recorded by machine. A party may demand that the hearing be recorded by a certified shorthand reporter, but that party must bear all costs associated with the shorthand reporter. The record of the hearing or a transcript shall be filed with the agency and maintained for a period of five years. The hearing shall be open to the public unless that right is waived pursuant to subrule 9.1(4) and Iowa Code section 17A.10(2). (Note: The Iowa open meetings law precludes the closing of a hearing if the presiding officer has a quorum of a board or a commission.)

9.3(5) *Presentation of testimony and evidence.* In the hearing, each party shall have the right to present evidence and the testimony of witnesses, and to cross-examine the witnesses of another party. A person who has submitted testimony in written form is subject to cross-examination if that person is available. Opportunity shall be afforded to each party for redirect and recross-examination, and to present evidence and testimony as rebuttal to evidence presented by another party.

9.3(6) *Briefs.* At any time during the contested case proceeding, the presiding officer may order the filing of briefs on any of the issues.

9.3(7) *Ex parte communication.* Unless required for the disposition of ex parte matters specifically authorized by statute, there shall be no communication between the presiding officer and any of the parties concerning any issue of fact or law unless all parties are given advance notification of the communication and its contents and are provided an opportunity to respond to the communication. Any other method of ex parte communication is unlawful under the provisions of Iowa Code section

17A.17(2). If the presiding officer receives an unlawful communication, it shall be included in the case record, if written, or summarized and included in the record, if oral. The presiding officer may immediately decide the contested case against the party making the unlawful communication. If the surrounding circumstances indicate a willful violation, the officer shall warn the party and accord all the other parties to the case an opportunity to respond to the communication.

429—9.4(17A) Record and decision.

9.4(1) *Record.* The record in a contested case shall include:

- a. All pleadings, motions, and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of all matters officially noticed.
- d. All questions and offers of proof, objections, and rulings.
- e. All proposed findings and exceptions.
- f. Any decision, opinion, or report by the officer presiding at the hearing.

9.4(2) *Decision.* Contested case decisions are regulated generally by Iowa Code section 17A.15. A decision shall be in writing and consist of the following parts:

- a. A concise statement of facts which support the findings of fact.
- b. Findings of facts which must be solely based on evidence in the record.
- c. Conclusions of law which must be supported either by cited authority or reasoned opinion.
- d. A decision or order which must set forth the action to be taken or the disposition of the case.

At the discretion of the presiding officer, the parties may be requested or allowed to submit proposed findings of fact and conclusions of law. When the presiding officer is a quorum of the commission, the decision is the final decision of the agency. When the presiding officer is a hearing officer, the officer issues a proposed decision.

429—9.5(17A) Request for rehearing. Any party may file an application for rehearing, stating the specific grounds and the relief sought, within twenty days after the issuance of any final decision by the agency in a contested case. A copy of an application shall be timely mailed by the applicant to all parties of record not joining in the application. An application for rehearing shall be deemed to have been denied unless the agency grants the application within twenty days after its filing. A request for rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

429—9.6(17A) Judicial review. A party who is aggrieved or adversely affected by a final decision of the agency may seek judicial review of that decision as provided in Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 17A.12.

[Filed 6/12/87, Notice 4/8/87—published 7/1/87, effective 8/5/87]